

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Samuel Ross	Team: Squad #1	CCRB Case #: 201506334	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 07/31/2015 12:22 AM	Location of Incident: north side of Park Avenue and Waverly Avenue	Precinct: 88	18 Mo. SOL 1/31/2017	EO SOL 1/31/2017	
Date/Time CV Reported Fri, 07/31/2015 9:47 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 07/31/2015 9:47 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POF Cameel Quallis	13823	949516	088 PCT
2. POM Mark Kosta	03138	949180	088 PCT
3. POM Jonathan Martinez	10299	953059	088 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Frank Aliffi	234	939856	088 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POF Cameel Quallis	Abuse: PO Cameel Quallis questioned § 87(2)(b)	
B.POF Cameel Quallis	Abuse: PO Cameel Quallis questioned § 87(2)(b)	
C.POM Jonathan Martinez	Abuse: PO Jonathan Martinez searched the car in which § 87(2)(b) was an occupant.	
D.POM Mark Kosta	Abuse: PO Mark Kosta searched the car in which § 87(2)(b) was an occupant.	
E.POF Cameel Quallis	Abuse: PO Cameel Quallis threatened § 87(2)(b) with the use of force.	

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via telephone on July 31, 2015. On July 31, 2015 at approximately 12:22 am, § 87(2)(b) rode in the rear driver's-side seat of her 2000 Mitsubishi Gallant while her § 87(2)(b)-year-old son, § 87(2)(b) who was on probation, drove. § 87(2)(b) friend, § 87(2)(b) rode in the front passenger's seat and § 87(2)(b)'s boyfriend, § 87(2)(b) rode in the rear passenger's seat. PO Cameel Quallis and PO Jonathan Martinez of the 88th Precinct observed that the vehicle had a faulty rear brake light and subsequently stopped the vehicle at the intersection of Park Avenue and Waverly Avenue in Brooklyn. They reported the stop to their supervisor, Sgt. Frank Aliffi, who responded to the scene with his operator, PO Mark Kosta.

PO Quallis and PO Martinez asked the vehicle's occupants to exit. The occupants complied. PO Quallis allegedly asked § 87(2)(b) and § 87(2)(b) for their identification (**Allegations A and B**), which they each provided. PO Martinez and PO Kosta then allegedly searched the vehicle (**Allegations C and D**), opening the glove compartment, center console compartment, and § 87(2)(b)'s backpack, located on a seat in the rear. When the search was finished, PO Quallis placed § 87(2)(b) under arrest because, while both he and § 87(2)(b) sat in the front seats, near the knife, the car belonged to § 87(2)(b) family. PO Kosta explained to § 87(2)(b) that one of the officers had recovered an illegal knife from the vehicle. § 87(2)(b) stated to the investigation that the knife had been stored inside the closed glove compartment prior to the search, whereas the officers contend that it was in plain view. PO Quallis placed § 87(2)(b) in the RMP, allegedly balling up her fist and holding it approximately six inches from § 87(2)(b)'s face as she did so (**Allegation E**). Neither § 87(2)(b) nor § 87(2)(b) knew what statements were made by either § 87(2)(b) or PO Quallis before PO Quallis allegedly make this gesture.

PO Quallis and PO Martinez transported § 87(2)(b) to the 88th Precinct stationhouse for processing. Meanwhile, § 87(2)(b) and § 87(2)(b) were allowed to depart from the scene in § 87(2)(b)'s vehicle. They were not issued any summons. Approximately three hours later, § 87(2)(b) was released from the 88th Precinct stationhouse with a Desk Appearance Ticket. He was charged with § 87(2)(b)

§ 87(2)(b) [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Mediation, Civil and Criminal Histories

- § 87(2)(b) initially accepted mediation, but later declined to mediate § 87(2)(b)
- On September 4, 2015 the Office of the Comptroller notified the undersigned investigator that neither § 87(2)(b) nor § 87(2)(b) had filed any notice of claim in regards to this incident.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (02. Board Review), § 87(2)(b) (03. Board review), § 87(2)(b) (04. Board Review), or § 87(2)(b) (05. Board Review).
- This is the third CCRB complaint filed against PO Quallis, who has been a member of the NYPD for three years (06. Board Review). § 87(2)(g)
- This is the second CCRB complaint filed against PO Kosta, who has been a member of the NYPD for five years (07. Board Review). § 87(2)(g)
- This is the third CCRB complaint filed against PO Martinez, who has been a member of the NYPD for three years (08. Board Review). In CCRB Case # 201402142, two offensive language allegations and a discourtesy allegation made against him were substantiated. § 87(2)(g)

Potential Issues

- Neither § 87(2)(b) nor § 87(2)(b) provided statements to the investigation. § 87(2)(b) missed CCRB interview appointments on August 11 and 17, 2015. § 87(2)(b) missed CCRB interview appointments on August 11, 17, and 25, 2015. Neither § 87(2)(b) nor § 87(2)(b) called ahead to cancel or reschedule any of the aforementioned interview appointments.

Findings and Recommendations

Allegations not pleaded

- § 87(2)(g)
- § 87(2)(g)
- § 87(2)(g)

- § 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Allegation A—Abuse of Authority: PO Cameel Quallis questioned § 87(2)(b)

Allegation B—Abuse of Authority: PO Cameel Quallis questioned § 87(2)(b)

§ 87(2)(b) testified that, after PO Quallis and PO Martinez asked all of the civilians to exit the vehicle, PO Quallis asked him and § 87(2)(b) for their identification. Both he and § 87(2)(b) provided them to her. § 87(2)(b) did not ask why she wanted them. PO Quallis brought their identification into an RMP with her and later returned them. § 87(2)(b) also testified that an officer asked § 87(2)(b) and § 87(2)(b) for their identification but she did not remember which officer did so. § 87(2)(b) was uncooperative in providing a statement.

PO Kosta and Sgt. Aliffi testified that they did not remember if any officer ever asked either § 87(2)(b) or § 87(2)(b) for their identification. PO Martinez testified that he never witnessed any officer ever ask § 87(2)(b) or § 87(2)(b) for their identification. PO Quallis, for her part, did not remember asking either individual for their identification and did not witness any other officer do so.

While both ITSD (16. Board Review) and the New York State Troopers provided records of computer searches performed for § 87(2)(b) and § 87(2)(b) they did not locate the records of any searches performed for § 87(2)(b) or § 87(2)(b).

§ 87(2)(g) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Allegation C—Abuse of Authority: PO Jonathan Martinez searched the vehicle in which

§ 87(2)(b) was an occupant.

§ 87(2)(b) alleged that after she and the vehicles' other occupants exited, PO Martinez searched the vehicle with PO Kosta. She did not remember which officer searched which areas of the vehicle, but stated that they collectively searched under the seats, between the seats, in the open compartments on the doors, in the foot wells, in the closed glove compartment and center console compartment, in the seatback pockets, and inside a backpack located in the back seat.

§ 87(2)(b) did not allege that PO Martinez searched the vehicle. As previously mentioned, he alleged that either PO Kosta or Sgt. Aliffi performed the search.

PO Martinez testified that he did not break the plane of or search the vehicle. After the vehicle's occupants exited, he stood with them to ensure that they remained compliant. He faced away from the vehicle as he did so and maintained that he did not witness a vehicle search. PO Quallis and PO Kosta both testified that PO Quallis and PO Kosta searched the vehicle together and that

PO Martinez did not break the plane of the vehicle. Sgt. Aliffi testified that PO Quallis searched the vehicle with either PO Kosta or PO Martinez.

§ 87(2)(g)

Allegation D—Abuse of Authority: PO Mark Kosta searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed among all parties that PO Kosta performed a search of the passenger compartment of the vehicle. § 87(2)(g)

§ 87(2)(b) testified that she knew there was a knife inside the vehicle. She had found it on the street several days prior and had placed it inside the glove compartment. § 87(2)(b) described the knife as having a black handle and a blade approximately four inches long. When asked how the knife opened, § 87(2)(b) made demonstrated a flicking motion with her wrist and hand. However, when questioned further, she stated that she had used two hands to open the knife and did not know if it was possible to open it with one hand. She did not know if it had a spring inside and did not know if it locked in an open position. § 87(2)(b) stated that the knife was inside the glove compartment when she was stopped and was certain that the glove compartment was closed when she and the other occupants exited the vehicle. She testified that PO Kosta opened both the center console compartment and the glove compartment during the course of their search. § 87(2)(b) corroborated her statement that PO Kosta searched inside the glove compartment. However, neither § 87(2)(b) nor § 87(2)(b) witnessed the moment when an officer recovered the knife.

PO Quallis testified that when she initially approached the vehicle's passenger side she observed a knife in plain view, located in an open area of the center console. The criminal court complaint, arrest report, and complaint report (17. Board Review)—all of which were prepared by PO Quallis—each stated, § 87(2)(g), that the knife was observed in the center console. PO Quallis could not describe the knife at the time of her interview or articulate why she had believed it to be a gravity knife but recalled that at the time of the incident she recognized it to be a gravity knife based on her training and prior experience with such weapons. At the moment she saw the knife she determined to arrest the driver and signaled this to PO Martinez. After she and PO Martinez asked the vehicle's occupants to exit, she reached into the passenger's side of the vehicle and recovered the knife from the center console. She tested the knife and determined that it was in fact a gravity knife. PO Kosta then performed a limited search of the "lungeable area" of the driver's seat in order to make sure that it was clear of weapons, shining his flashlight under the seat and into an open compartment on the door, and checking behind the visor. PO Quallis did not observe PO Kosta open any compartment.

PO Kosta testified that when he first approached the vehicle the occupants were still inside. He looked through the driver's side window and observed a knife in plain view in the center console, which he was unable to describe in detail. He stated that if the center console had a closeable lid, it was already open. After the civilians exited the vehicle, PO Quallis recovered the knife from the center console. PO Kosta then performed a search of the "lungeable area" of the driver's seat, looking under the seat, on the door, in the open center console, on top of the dashboard, and behind the visor. He did not open any compartment. PO Kosta testified that he performed this search in order to ensure that there were no weapons located where an individual in the driver's seat could obtain them. He explained further that the officers intended to return the vehicle to the civilians but could not do so without first making sure the vehicle was clear of other weapons.

According to *People v. Derrell*, N.Y.S.2d 905 (2009), an officer may not search the area from within which an individual might gain possession of a weapon if the individual or individuals in question are in no position to obtain any objects in the passenger compartment of the car at the time the search occurred (18. Board Review). § 87(2)(g)

However, according to *People v. Galak*, 81 N.Y.2d 463 (1993), a warrantless search of a vehicle is permissible given the "automobile exception" to the search warrant requirement. *Galak* enumerates the following requirements for said exception: that there be an arrest, that the officers have probable cause to believe that evidence or contraband will be found inside the vehicle, and that there exist a "flexible" nexus between the arrest and the purpose of the search (19. Board Review). § 87(2)(g)

. Second, according to *People v. Peterson* 173 A.D.2d 574 (1991), the discovery of a weapon during a vehicle stop provides police officers with probable cause to believe that other weapons may be discovered in the vehicle and therefore justifies a contemporaneous search pursuant to the automobile exception (20. Board Review). § 87(2)(g)

§ 87(2)(g)

Allegation E—Abuse of authority: PO Cameel Quallis threatened § 87(2)(b) with the use of force.

§ 87(2)(b) testified that when PO Quallis placed § 87(2)(b) in the RMP, she leaned across his body to buckle his seat belt. § 87(2)(b) did not hear any conversation between § 87(2)(b) and PO Quallis. However, she then heard PO Quallis say, “You’ve got a smart mouth.” PO Quallis then balled up her fist and held it approximately six inches from § 87(2)(b) face. § 87(2)(b) said, “Look, mom, she wants to hit me.” § 87(2)(b) did not describe PO Quallis’ baling up her fist but heard § 87(2)(b) state that PO Quallis had tried to hit him. He did not see if PO Quallis did so.

Neither Sgt. Aliffi nor PO Martinez recalled any animosity between PO Quallis and § 87(2)(b) as PO Quallis placed him inside the RMP. Neither saw PO Quallis ball up her first and place it near § 87(2)(b) face, nor did they hear § 87(2)(b) state that PO Quallis had attempted to hit him. PO Kosta stated that as he was being placed in the RMP, § 87(2)(b) yelled and was aggressive. However, PO Kosta did not recall any specific statements § 87(2)(b) made. Further, he testified that PO Quallis was not visibly irritated by § 87(2)(b) behavior, although he did not remember if she raised her voice. PO Kosta testified that PO Quallis did not ball up her fist and hold it near § 87(2)(b) face and that § 87(2)(b) never stated that PO Quallis had tried to hit him. PO Quallis, for her part, stated that as she placed § 87(2)(b) in the RMP he became aggressive, saying, “Fuck you,” “This is bullshit,” and “Fuck all of y’all.” PO Quallis was calm and did not become angry with § 87(2)(b). She responded that there was no need to be angry and that § 87(2)(b) would be released with a desk appearance ticket within two hours. She denied holding her first near § 87(2)(b) face and stated that § 87(2)(b) never said she had tried to hit him.

§ 87(2)(g)

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Squad: 1

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date